

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WAYNE SIMS,

Petitioner,

vs.

BRIAN WILLIAMS, et al.,

Respondents.

Case No. 2:08-cv-00393-JCM-GWF

ORDER

Before the court are petitioner's motion to reopen (#22) and respondents' opposition (#24). The motion is without merit, and the court denies it.

This court received the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (#5) on March 27, 2008. Respondents filed their answer (#11) on September 5, 2008. The petition was awaiting a decision on the merits when on September 1, 2009, petitioner filed a motion to dismiss the action voluntarily without prejudice (#14). On November 23, 2009, the court entered an order (#17) and judgment (#18) granting the motion and dismissing the action. The court warned petitioner that the dismissal of the action did not affect the running of the period of limitations pursuant to 28 U.S.C. § 2244(d).

The court agrees with respondents. The dismissal of the action without prejudice is still a dismissal of the action, and the court entered final judgment. The time to appeal the judgment expired years ago. In the motion (#22), petitioner states that he made a mistake in dismissing the action voluntarily. Mistake, inadvertence, surprise, or excusable neglect are grounds for relief from the judgment. Fed. R. Civ. P. 60(b)(1). However, petitioner needed to file such a motion within

1 one year of entry of the judgment. Fed. R. Civ. P. 60(c)(1). Petitioner filed the motion (#22) years
2 after the time to file a Rule 60(b)(1) motion expired. Petitioner has not given any other reason
3 under Rule 60(b) why the court should reinstate the action. Even if he did, and even if the reason is
4 one for which the one-year limit does not apply, petitioner still has not explained why he took so
5 long to file the motion. See Fed. R. Civ. P. 60(c)(1) (motion to be filed within reasonable time, and
6 no more than one year for certain reasons).

7 Reasonable jurists would not find the court's conclusions in this order to be debatable or
8 wrong, and the court will not issue a certificate of appealability.

9 IT IS THEREFORE ORDERED that petitioner's motion to reopen (#22) is **DENIED**.

10 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

11 DATED: July 15, 2014.

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14 JAMES C. MAHAN
United States District Judge
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